

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

RONALD D. MADDEN,

Plaintiff,

vs.

ANTON ANTONOV, AV
TRANSPORTATION, INC., THE
ANDERSONS, INC., BNSF RAILWAY
COMPANY,

Defendants.

4:12CV3090

MEMORANDUM AND ORDER

Gramercy Insurance Company (“Gramercy”), insurer for defendant and cross-claim defendant Anton Antonov and AV Transportation, Inc., has been placed into receivership in the State of Texas. (Filing No. 37). The Texas court has entered the following order:

An automatic stay is in effect with respect to actions against any insured of [Gramercy Insurance Company] for which [Gramercy Insurance Company] is liable under a policy of insurance, or is obligated to defend such insured, pursuant to TEX. INS. CODE § 443.008 (d). Such stay shall continue for 90 days after the date of this Order, or such further time as ordered by this Court.

(Filing No. 37, at CM/ECF p. 13, ¶ 5.2.

After conferring with the parties¹ during a conference call held today,

IT IS ORDERED:

- 1) To potentially facilitate moving forward on this case, the plaintiff and defendant BNSF shall promptly pursue filing notice of this lawsuit and their respective claims against the Gramercy insured, Anton Antonov and AV Transportation, Inc., in the Texas receivership forum.

¹ The former counsel for Anton Antonov and AV Transportation, Inc. has withdrawn with leave of court, but nonetheless participated in the call to assist as needed in understanding the posture of the case. An audio file of the hearing is available at Filing No. 46 for review by new counsel for Anton Antonov and AV Transportation, Inc.—whether that counsel is selected by the appointed rehabilitator for Gramercy or in the absence of such relief from the receivership stay, by Anton Antonov and/or AV Transportation, Inc.

- 2) The plaintiff's claim against defendant, The Andersons, Inc., is not an action against a Gramercy insured (i.e. Anton Antonov and AV Transportation, Inc.). Accordingly, the stay imposed by the Texas order has no impact on the pending and fully submitted motion to dismiss filed by The Andersons, Inc., (Filing No. 25), and the court will proceed with resolving that motion.²
- 3) As to discovery:
 - a. Written discovery (and associated response deadlines) served by or on Anton Antonov and AV Transportation, Inc. is stayed pending further order of the court.
 - b. Written discovery (and associated response deadlines) by and between all other parties is not stayed.
 - c. As to all parties, deposition discovery is stayed pending further order of the court.
 - d. The January 31, 2013 deadlines for identifying expert witnesses expected to testify at the trial and for completing written discovery under Rules 33 through 36 of the Federal Rules of Civil Procedure, along with any deadline for filing motions to compel such discovery, are set aside pending further order of the court.
- 4) The telephonic conference previously set for February 19, 2013 at 10:00 a.m. is re-scheduled and will be held on February 6, 2013 at 9:00 a.m. to discuss the status of proceeding against Gramercy insured, Anton Antonov and AV Transportation, Inc., further case progression deadlines, and potential settlement. The court will email conferencing instructions for participation in the call.

December 27, 2012.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge

² The plaintiff requests oral argument before Judge Gerrard on the motion to dismiss.